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Analysis: an introduction to ethical concepts

Acts and omissions

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At first sight it seems reasonable to say there is an important difference between, on the one hand, actively causing harm or injury to a person and, on the other, omitting to prevent harm from occurring. There is a difference between failing to resuscitate an aged terminally-ill patient who has arrested and actively killing a similar patient who shows no signs of imminent death. Or at least it has seemed to many that such a difference is obvious: the validity of the distinction has been challenged (most recently by Jonathan Glover[1]) as being a distinction without a difference—since the consequences in both cases are identical.

From Aristotle via Thomas Aquinas and Roman Catholic moral theology has come the distinction between act and omission. A recent statement of the formal principle is the following:

> To act intentionally ('at will') is to *bring about* or *prevent* a *change* in the world (in nature). By this definition, to forebear (omit) action is either to *leave* something *unchanged* or to *let* something happen.[2]

The implication is plain. You cannot be held responsible for things you did not do. But it is not quite as simple as that.

To fail to operate on a baby with a tracheal esophageal fistula would normally be tantamount to infanticide: but if the baby is severely deformed the case is less clear[3]. A major objection to the principle of acts and omissions has been the claim that whatever distinction there is between an act and an omission it is not a morally relevant distinction. It may be argued that the only humane options are to operate or actively to hasten death: the worst course is to allow such a child to wane and die from lack of nourishment. Such extreme cases do strain the distinction and raise the question whether there is a difference in principle between acting to harm and failing to act to help.

The distinction between acts and omissions is not only important in ethical discourse. It also has important legal implications. George Fletcher observes that 'in analysing the doctor's legal duty to his patient, one must take into consideration whether the question involved is an act or omission'[4].

A doctor may more readily omit to render aid to a stranger than to his own patient. But he may also omit to perform certain procedures more justifiably than others. A closer examination of acts and omissions at this point requires consideration of the principle of double effect and the distinction between ordinary means and extraordinary means.

Ordinary and extraordinary means

Ordinary means, it is held, must always be adopted —where any obligation exists to act—whereas extraordinary means need not. Pope Pius XII employed this distinction in his allocution to anaesthetists on 24 November 1957. He considered the use of a respirator to be discretionary or extraordinary. In doing so he employed the principle in a technically ethical rather than clinical sense. In ethical discourse 'ordinary' does not just mean 'that which is readily available and known to be effective': it may mean rather that which would not 'impose on the patient undue suffering or expense, or, it may be, an undue distortion of his personality or a barrier in his relationships with his kin, a lessening of his human capacity, and all without reasonable hope of benefit'.[6] Such an understanding of the distinction permits a wider discretion than a purely clinical judgment would. In the rapidly-moving world of medical practice and technology today's 'extraordinary' is tomorrow's commonplace. While it may not be quite true to say that patients in hospital no longer die, they simply fail to respond to resuscitation attempts, it is becoming almost daily more nearly true. This has led the Euthanasia Education Council in New York to employ in their Living Will the terms "artificial means or 'heroic measures' " in an attempt to make their meaning clear.

If the distinction between clinical and ethical meanings of 'ordinary' holds good the terms of the debate are clarified but the problem of deciding is less straightforward. A perfectly 'ordinary' operation to clear a blocked esophagus may constitute a pointless intervention when the prospective life of the patient is considered. On the other hand it may serve to alleviate the awesome responsibility a clinician may feel to discover and employ whatever artificial means or heroic measures are currently available.

Double effect

If it can be morally and legally justifiable sometimes to omit to bring about inherently good effects, is it ever permissible actively to bring about bad effects? The principle of double effect allows such acts under certain carefully defined conditions. Formally stated the principle runs thus:

Doing an action that has a bad effect is permissible if the action is good in itself, the intention is solely to produce the good effect, the good effect is not achieved through the bad effect, and there is sufficient reason to permit the bad effect.[7]

On this principle it would be possible to justify the administration of analgesics to a terminally-ill patient which had the incidental, but foreseen consequence of shortening his life. But each of the conditions is important. The intention must be to produce solely the good effect, even though it is foreseen that the bad effect will very probably also occur.

It is the distinction between intention and foreknowledge which causes difficulty. A V Campbell challenges the distinction on the ground that the foreseen bad effects are 'a result of his action which he foresaw, and therefore for which he is responsible'.[8] Within the casuistic framework from which it derives (Aristotelean-Thomism) the distinction makes technical sense. It is challenged on two grounds: Campbell's objection to the fineness of the distinction and the utilitarian objection to the identity of outcomes. Perhaps the following example will serve to meet these objections in part.

If I were to go to the aid of a road-accident victim and decide that in the thick fog he stood no chance of survival unless I could get him off the road, and if I were then to shift him fully realising the attendant risk of injury from moving him, and if as a result he did, in fact, die of such injuries, would it be correct to say I had intended his death? Or that I was responsible for it? On the principle of double effect it would not. The action was itself good. The intention was only to produce a good effect. The good effect was not achieved through the bad effect. The risk involved in not moving him was sufficient to justify the bad effect (*ie* the possibility of his being injured in the shift).

The action of moving the victim is viewed quite differently from, for example, a doctor arriving on the scene and deciding that since he will probably die in pain whether or not he is shifted the best course would be to end his life humanely with an injection. The question is, should it be viewed so differently? It could be argued that there are two important differences: in the second case there is a higher probability—a virtual certainty—of death resulting, so the consequences are not strictly identical; and there does seem to be a clear distinction possible between what was only foreseen in the first case (but feared) and what was deliberately enacted in the second. To be fair we must observe that the intention in both cases was, in some sense, the comfort and safety of the victim. Campbell's objection holds against any attempted black-and-white caricature.

It remains possible for the utilitarian or consequentialist to stress the identity of practical outcome. The question of whether there is any more to morality than that is outside our present scope, but it is at least a controversial position. For those whose concern is also with conformity to moral principles or conscience the distinctions may be crucial.

In practical decision-making there remains an important difference between acts and omissions. No amount of philosophical discussion obscures the fact that it is a common-sense guide in many cases. But there are complexities, too—and the distinction cannot thoughtlessly be applied in all cases. Nevertheless, for ordinary moral thinking it may prove to be a valuable rule-of-thumb.

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Further reading

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